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HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. (S) No. 2387 of 2007

Petitioners :

1. Ashok Kumar Durugkar, son of Shri Munga Ram Durugkar, aged about 41 years, resident of Janta Quarter V-3, Janta Market, Padmanabhpur, Durg, District Durg (Chhattisgarh),

2. Tulsidas P. Mayani, son of Prabhudas Mayani, aged about 46 years, resident of L.I.G. 424, Padmanabhpur, Durg, District Durg (Chhattisgarh)

Versus

Respondents :

1. Dena Bank, Through it's Branch Manager, Durg (Chhattisgarh),

2. Lead District Manager, Surana Complex, Station Road, Durg (Chhattisgarh),

3. General Manager (H.R.M.), Dena Bank Corporate Center, C-10, 'G' Block, Bandra Kurla Complex, Bandra (East), Mumbai (M.S.),

4. Chairman Cum Managing Director, Dena Bank Corporate Center, C-10, 'G' Block, Bandra Kurla Complex, Bandra (East), Mumbai (M.S.).

Writ Petition under Articles 226 & 227 of the Constitution of India

Single Bench: Hon'ble Mr. Justice Satish K. Agnihotri.

Present : Mr. H.B. Agrawal, Senior Advocate with Ms. Sangeeta Mishra, Advocate for the petitioners.

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ORDER
(Passed on 18th Day of April, 2007)

1. The petitioners are working in the Subordinate Cadre of the respondents Bank. The petitioners appeared in the examination for promotion from the Subordinate Cadre to Clerical Cadre, as per vacancies notified vide memo dated 21.9.2006 (Annexure P-4) for different regions.

2. According to the learned counsel appearing for the petitioners, the petitioners obtain more than 40% marks as per Class-IV of the selection modalities for being enlisted in the order of merit on the basis of marks obtaining in the written test. The petitioners having not been declared as passed and not shown in the order of merit on the basis of marks, have filed this petition challenging that the respondents have appointed the persons against those centres, where no vacancy was notified and the petitioners were not considered for appointment. The petitioners applied for promotion in Raipur region where the notified vacancies were 16 but only 6 persons were declared passed and the petitioners though got 40% and 42% marks respectively, but not declared passed. Thus, 10 vacant posts remained un-fulfilled and the same has been transferred to other regions.

3. I have heard learned counsel appearing for the petitioners, this is not the case of the petitioners that any other candidates having lesser marks than the petitioners have been promoted to the clerical cadre. The main grievances of the petitioners is that the vacancies available at Raipur region must be filled-up first before accommodating other persons from other area who may have obtained more marks than the petitioners, as per

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terms of settlement dated 9.4.1992 under Section 2 (P) of the Industrial Disputes Act, 1947. Selection modalities is prescribed quoted here in under:-

> "The Bank shall hold written test for the purpose of promotion from subordinate cadre to clerical cadre. The candidates who are securing minimum qualifying marks in the written test i.e. 40% in case of General Category and 35% in the case of Scheduled Castes/Scheduled Tribes Categories, will be enlisted in the order of merit on the basis of marks obtaining in the written test.
>
> In case the number of candidates securing the minimum qualifying marks in the written test as specified above exceed the number of vacancies identified as per para (2) of the Settlement, candidates in the order of merit to the extent of vacancies will be promoted.
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> Posting of promotees will be within the State/Region."

4. The memo dated 21.9.2006 (Annexure P-4) for promotion from Subordinate Cadre to Clerical Cadre does not contemplates promotion region-wise. The same provides for filling-up of 110 vacancies available in all the centres as in terms of Promotion Policy Settlement dated 9th April, 1992. Since the promotion is on all India basis, the contention of the learned counsel for the petitioners that candidates eligible from Branches/Offices in Raipur region be considered for promotion against vacancies available at Raipur region only is not sustainable. The regions were provided for the purpose of holding examination not for any other purpose.

5. The final merit list as per circular dated 30.12.2006 (Annexure P-2) is not on the basis of region but for the total 110 vacancies available in clerical

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cadre of Dena Bank. The merit list is annexed as Annexure (A) to the memo dated 30.12.2006, which reads as under and makes the position clear:-

> "..... As per Govt. Guidelines, Bank has to provide reservation in promotion and also to adopt post based roster system for promotion from Subordinate Cadre to Clerical Cadre when the elements of direct recruitment in clerical cadre is less than 75%. Keeping in view the aforesaid facts, reservation has been provided as per guidelines prescribed by Government of India for SC and ST candidates.
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> Reservation for physically Handicapped employees has been provided as per Government of India guidelines. Four vacancies namely two for Orthopeadically Handicapped and one each for visually Handicapped and Hearing Handicapped respectively were earmarked. However, no candidate qualified under visually Handicapped and hearing handicapped category.
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> Scheduled Caste, Scheduled Tribe and Physically Handicapped Candidates promoted on their own merits have been shown as General Category candidates.
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> The list of 110 successful candidates who qualified for promotion to clerical cadre is enclosed as Annexure (A) - 84 candidates qualified for promotion under General Category, Annexure (B) - 16 candidates qualified for promotion under Scheduled Caste Category, Annexure (C) - 8 candidates qualified for promotion under Scheduled Tribe Category and Annexure (D) - 2 candidates belonging to Physically Handicapped Category alongwith waiting list in the respective category in the order of Merit."

6. The Supreme Court in the case of ***T.N. Administrative Service Officers Association and another v. Union of India and others*** *(2000) 5 SCC 728* observed as under:-

> "18.....It is a well-settled principle in service jurisprudence that even when there is a vacancy, the State is not bound to fill up such vacancy nor is there

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any corresponding right vested in an eligible employee to demand that such post be filled up. This is because the decision to fill up a vacancy or not vests with the employer who for good reasons, be it administrative, economical or policy, can decide not to fill up such post (s)....."

7. In the matter of ***Food Corpn. Of India and others vs. Bhanu Lodh and others*** (2005) 3 SCC 618, the Supreme Court observed as under:-

"14. Merely because vacancies are notified, the State is not obliged to fill up all the vacancies unless there is some provision to the contrary in the applicable rules. However, there is no doubt that the decision not to fill up the vacancies, has to be taken bona fide and must pass the test of reasonableness so as not to fail on the touchstone of Article 14 of the Constitution. Again, if the vacancies are proposed to be filled, then the State is obliged to fill them in accordance with merit from the list of the selected candidates. Whether to fill up or not to fill up a post, is a policy decision, and unless it is infected with the vice of arbitrariness, there is no scope for interference in judicial review. (See in this connection Govt. of Orissa v. Haraprasad Das[6] and State of Orissa v. Bhikari Charan Khuntia[7].)"

8. Applying law enunciated by the Supreme Court to the fact of the present case, there is no merit in the case.

9. As a result and for the reasons stated hereinabove, this petition is dismissed summarily.

Sd/-
Satish K.Agnihotri
Judge

Subhash